

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Michel H. Malek  
Title: SPINAL STABILIZATION  
SYSTEMS  
Appl. No.: 10/722,119  
Filing Date: 11/25/2003  
Examiner: David C. Comstock  
Art Unit: 3733  
Confirmation Number: 4839

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR  
PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants have calculated PTA for the captioned patent application and have determined that the patent is entitled to 2148 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 2177 days

(b) Total Applicant delay: 29 days

Final PTA Determination under 37 CFR §1.703(f): 2148 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

The Section of the Notice of Allowance titled "Determination of Patent Term Adjustment under 35 U.S.C. §154(b)" makes the statement that:

"If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 896 days".

This statement is incorrect because it does not take into account accrued patent term adjustment under 37 C.F.R. §1.703(b) due to having an overall pendency of greater than three years, and the overall Patent Term Adjustment would be 2148 days, as shown in the attached calculation.

37 C.F.R. §1.705(d) states that "Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues." As the above-identified error was made at allowance, the applicant is filing this request for reconsideration under an abundance of caution, in the knowledge that the PTO does not include patent term adjustment resulting from 1.703(b) in its PTA calculations at allowance.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 2148 days PTA.

Additionally, in accordance with Applicants' duty of candor and good faith before the U.S. Patent and Trademark Office, Applicants note that part of the 896 days of patent term adjustment as indicated on the Notice of Allowance mailed on June 30, 2010 for the above-captioned application is in disagreement with the Applicants' own calculation of Patent Term Adjustment. Applicants note that 97 days of patent term adjustment was granted in the Applicants favor based on the Patent Office's failure to respond to the amendment filed on 6/2/2008 within 4 months. Applicant disagrees with this calculation. Although the calculation of 97 days in the Applicant's favor does not affect the overall amount of patent term adjustment and is not included in this request for reconsideration, it is hereby requested that the Patent Office verify the accuracy of the calculation of the patent term adjustment for the present application.

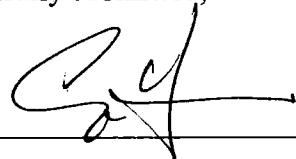
Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date 29 SEP 10

By 

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## Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 036163-0103

Application Number: 10/722119

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/25/2003	0		
Edit Delete	Notice to File Missing Parts	02/26/2004	93		
Edit Delete	Response to Notice to File Missing Parts	04/28/2004	155		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	04/28/2004	155		
	14 month From Application date	01/25/2005	427		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	08/10/2005	624		
	3 Year Period Starts	11/25/2006	1,096		
Edit Delete	Restriction Requirement	01/18/2007	1,150	(723)	
Edit Delete	Restriction Requirement Response Received at PTO	02/20/2007	1,183		
Edit Delete	Restriction Requirement	05/04/2007	1,256		
Edit Delete	Restriction Requirement Response Received at PTO	05/16/2007	1,268		
Edit Delete	Restriction Requirement	07/30/2007	1,343		
Edit Delete	Restriction Requirement Response Received at PTO	08/30/2007	1,374		
Edit Delete	Non-Final Office Action	10/04/2007	1,409		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/02/2008	1,499		
Edit Delete	Final Office Action	04/02/2008	1,590		
Edit Delete	Final Office Action Response Received at PTO	06/02/2008	1,651		
Edit Delete	Advisory Action	06/26/2008	1,675		
	3 Year Period Paused	08/25/2008	1,735		
Edit Delete	Notice of Appeal Received at PTO	08/26/2008	1,736		
Edit Delete	Pre-Appeal Brief Request Received at PTO	08/26/2008	1,736		
Edit Delete	Appeal Decided by Examiner	09/25/2008	1,766	(31)	
Edit Delete	Non-Final Office Action	01/07/2009	1,870		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/20/2009	1,883		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	05/20/2009	2,003		
Edit Delete	Non-Final Office Action	09/02/2009	2,108	(105)	

Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	12/01/2009	2,198		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	12/30/2009	2,227		29
Edit Delete	Final Office Action	03/26/2010	2,313		
Edit Delete	Final Office Action Response Received at PTO	05/21/2010	2,369		
Edit Delete	Notice of Allowance	06/30/2010	2,409		
	Projected Patent Grant Date	01/11/2011	2,604	(1508) 2177	
			<b>Totals:</b>	<b>2,177</b>	<b>29</b>
			<b>PTA:</b>	<b>2,148</b>	

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**FOLEY & LARDNER LLP**

Version: 3.02.10

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IP: 10.24.4.213

Foley &amp; Lardner LLP